

1 HOGAN LOVELLS US LLP
2 Colm A. Moran (Bar No. 202685)
3 1999 Avenue of the Stars, Suite 1400
4 Los Angeles, California 90067
5 Telephone: (310) 785-4600
6 Facsimile: (310) 785-4601
7 colm.moran@hoganlovells.com

8 Attorneys for Respondent
9 YAMAHA MOTOR CORPORATION, U.S.A.

10 STATE OF CALIFORNIA
11 NEW MOTOR VEHICLE BOARD

12 In the Matter of the Protest of
13 SAN JOSE YAMAHA,
14 Protestant,

15 v.

16 YAMAHA MOTOR CORPORATION,
17 U.S.A.,
18 Respondent.

19 Protest No. PR-2394-14

20 **DECLARATION OF COLM A. MORAN IN**
21 **SUPPORT OF MOTION TO DISMISS**
22 **PROTEST**

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DECLARATION OF COLM A. MORAN

1 **DECLARATION OF COLM A. MORAN**

2 I, Colm A. Moran, hereby declare as follows:

3 1. I am a partner at the law firm of Hogan Lovells US LLP and am counsel for
4 Yamaha Motor Corporation, U.S.A. (YMUS) in this matter. I make this declaration based on my
5 personal knowledge and would and could competently testify thereto if called upon to do so.

6 2. YMUS issued a notice of termination to Protestant on March 24, 2014 (the “March
7 Notice”). A true and correct copy of the March Notice is attached hereto as Exhibit A.

8 3. On or about April 22, 2014, Protestant filed a Protest with the Board.

9 4. On June 11, 2014, the Board issued its Pre-Hearing Conference Order (the “PHC
10 Order”), a true and correct copy of which is attached hereto as Exhibit B. The PHC Order
11 required, among other things, that the parties (1) file and serve requests for identification and
12 production of documents by no later than June 30, 2014; (2) produce all documents by August 22,
13 2014; (3) file and serve preliminary witness lists by September 5, 2014; and (4) file and serve
14 final witness lists by October 27, 2014.

15 5. YMUS timely filed and served its requests for identification and production of
16 documents.

17 6. Protestant served written responses and objections to YMUS’s document requests
18 on July 14, 2014.

19 7. On August 6, 2014, Judge Anthony Skrocki held a telephonic hearing to rule on
20 any objections to the parties’ document requests. At the August 6 hearing, the parties agreed to
21 the scope of production Protestant would make in response to YMUS’s document requests. The
22 parties and Judge Skrocki also specifically discussed the remaining case schedule, including the
23 August 22, 2014, deadline to produce documents in this matter.

24 8. Both the parties’ agreement regarding the scope of discovery and the fact that all
25 remaining deadlines under the PHC Order remained in place is reflected in the August 6, 2014
26 Ruling on Objections to Requests for Production of Documents (“Ruling on Objections”) a true
27 and correct copy of which is attached hereto as Exhibit C.

28 DECLARATION OF COLM A. MORAN

1 9. Despite a clear obligation to do so, San Jose Yamaha did not produce any
2 documents on August 22, 2014, as required by the PHC Order.

3 10. On the same day – August 22, 2014 – the Orange County Superior Court held an
4 evidentiary hearing on YMUS’s application for a workplace violence restraining order against
5 Mr. Masi.

6 11. After a hearing, the Court ruled that Mr. Masi had made a credible threat of
7 violence against YMUS employee Rocky Aiello, who signed the March Notice on behalf of
8 YMUS.

9 12. Consequently, the Court issued a restraining order against Mr. Masi prohibiting
10 him from, among other things, continuing to harass Mr. Aiello. A true and correct copy of the
11 restraining order issued against Mr. Masi is attached hereto as Exhibit D.

12 13. On September 2, 2014, counsel for YMUS sent emails to Protestant inquiring
13 about the status of its overdue document production and a description of the documents it should
14 have produced. True and correct copies of my September 2, 2014, emails to Mr. Masi are
15 attached hereto as Exhibits E and F.

16 14. On September 4, 2014, Protestant produced a total of 9 pages of documents, true
17 and correct copies of which are attached hereto as Exhibit G.

18 15. Protestant’s document production was plainly inadequate. For example, it
19 included no documents relating to GE Capital (one of the vendors that was the subject of Mr.
20 Masi’s abuse), only five emails between YMUS and San Jose Yamaha, no internal
21 communications, and no documents related to YMUS’s supposedly wrongful conduct toward San
22 Jose Yamaha.

23 16. On September 8, 2014, counsel for YMUS again contacted Protestant about its
24 document production and demanded that Protestant comply with the PHC Order and the Ruling
25 on Objections. A true and correct copy of this email is attached hereto as Exhibit H.

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DECLARATION OF COLM A. MORAN

EXHIBIT A



YAMAHA MOTOR CORPORATION, U.S.A.

6555 KATELLA AVENUE, CYPRESS, CALIFORNIA 90630-5101 714/761-7332 FAX 714/761-7836

March 24, 2014

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
(7005 1820 0006 5889 4775)

Mr. John Masi
Cenotaph Resources, LLC d/b/a San Jose Yamaha
776 N. 13th Street
San Jose, CA 95112

RE: **Notice of Termination of Yamaha Dealer Agreement**

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

Dear Mr. Masi:

This notice is being sent to you pursuant to the Yamaha Motor Corporation, U.S.A. Sales and Service Agreement and the Dealer Agreement Amendment and Addendum (the "Dealer Agreement") between Yamaha Motor Corporation, U.S.A. ("Yamaha") and Cenotaph Resources, LLC d/b/a San Jose Yamaha ("San Jose Yamaha" or the "Dealership"), and applicable law. Effective sixty (60) days from your receipt of this letter (the "Effective Date"), the Dealer Agreement will terminate in accordance with this notice, without further action or notice of any kind.

Our action is based on your abusive and threatening conduct toward both third parties and our own employees. This conduct has included threats of violence directed to employees of GE Capital Retail Bank. In particular, GE Capital has informed us that during a recent telephone call with one of its employees, you called the employee a "whore" (and worse) and went on to state that you should kick her "in the teeth." In another recent call, you apparently told a GE Capital employee that you could find out where she lives and that you would have her "on the street." We understand that, as a result of these threats and abuse, GE Capital has refused to do any business with the Dealership in the future.

Customers have lodged similar complaints about your threats and verbal abuse. In fact, we understand that one such customer contacted the police as a result of his difficulties in dealing with you. Consistent with these complaints, you have repeatedly screamed at and used profanities toward Yamaha employees.

We cannot tolerate any situation in which our business partners and customers face threats of violence or abuse from an authorized Yamaha dealer. Your conduct is unacceptable and constitutes grounds for termination of the Dealer Agreement under Section 6.2(d), which allows Yamaha to terminate the agreement based on, among other things, any “conduct ... by Dealer ... which affects adversely Dealer’s operations or the goodwill and reputation of Dealer, Yamaha, or [Yamaha’s] products.”

As a consequence of your conduct, we have no choice but to discontinue our business relationship with San Jose Yamaha.

Please note that nothing in this notice should be construed to suggest that the California New Motor Vehicle Board (the “Board”) and the related sections of the California Vehicle Code (the “Code”) govern the provisions of the Dealer Agreement relating to side-by-side vehicles, watercraft, or power equipment. Upon the Effective Date, the Dealership shall no longer be an authorized dealer in Yamaha side-by-side vehicles, watercraft, or power equipment regardless of whether it files a protest with the Board pursuant to the Code concerning the notice.

Sincerely,



Rocky Aiello
Regional Business Manager
West Region

cc: William G. Brennan, Executive Director
California New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(by Certified Mail, Return Receipt Requested)

EXHIBIT B

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Protest of
12 SAN JOSE YAMAHA POWERSPORTS,
13 Protestant,
14 v.
15 YAMAHA MOTOR CORPORATION, U.S.A.,
16 Respondent.

Protest No. PR-2394-14

**PRE-HEARING CONFERENCE
ORDER**

17
18 To: Christopher J. Hogan, Esq.
Attorney for Protestant
19 LAW OFFICE OF CHRISTOPHER J. HOGAN
1952 Mantova Street
20 Danville, California 94506

21 Colm A. Moran, Esq.
Attorney for Respondent
22 HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
23 Los Angeles, California 90067

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1 PURSUANT TO STIPULATION OF COUNSEL for the parties, during a pre-hearing conference
2 held on Monday, June 9, 2014, IT IS HEREBY ORDERED THAT:

3 1. Counsel for the parties shall file and serve all requests for identification and production of
4 documents no later than Monday, June 30, 2014.

5 2. Objections, if any, to the requests for documents shall be filed and served no later than
6 Monday, July 14, 2014.

7 3. Counsel for the parties shall confer on Monday, July 21, 2014, in an attempt to resolve
8 their respective objections to the requested discovery.

9 4. Counsel for the parties shall submit via facsimile transmission or e-mail a Statement of
10 Disputed Discovery Requests, if any, by 12:00 p.m. (Pacific Time), on Friday, July 25, 2014. The
11 Board's e-mail address is nmvb@nmvb.ca.gov. If there are no disputed discovery requests, a letter
12 indicating such shall be submitted in lieu of the Statement of Disputed Discovery Requests. Failure to file
13 the Statement of Disputed Discovery Requests may result in the telephonic conference referenced in
14 paragraph 5 below being taken off calendar by Order of the Board.

15 5. A telephonic conference shall be held on Wednesday, July 30, 2014, at 10:00 a.m. (Pacific
16 Time), to rule on any objections to the requested discovery. **Counsel for the parties shall call (877) 402-**
17 **9753 and enter access code no. 437282 to join the telephonic conference.**

18 6. Documents requested and not objected to, and documents ordered to be produced following
19 the ruling on objections, shall be simultaneously exchanged no later than Friday, August 22, 2014, at 5:00
20 p.m. (Pacific Time), in a manner to be mutually agreed upon.

21 7. Preliminary lists of witnesses intended to be called shall be filed and served no later than
22 Friday, September 5, 2014, at 5:00 p.m. (Pacific Time). Final witness lists including experts shall be filed
23 and served no later than Monday, October 27, 2014, at 5:00 p.m. (Pacific Time). The lists shall state the
24 names, addresses, telephone numbers, and capacity or status of the witnesses.

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1 8. A telephonic Hearing Readiness Conference shall be held on Friday, October 31, 2014,
2 at 10:00 a.m. (Pacific Time), to determine whether the parties are ready to proceed with the merits hearing
3 tentatively scheduled for Monday, December 8, 2014. **Counsel for the parties shall call (877)**
4 **402-9753 and enter access code no. 437282 to join the telephonic conference.** A Pre-Hearing
5 Conference with the assigned Administrative Law Judge may be scheduled to address witnesses, exhibits,
6 pre-hearing briefs, stipulations of fact, and so on.

7 9. Counsel for the parties shall mutually exchange expert reports and supporting documents
8 no later than Monday, October 6, 2014, at 5:00 p.m. (Pacific Time), in a manner to be jointly agreed
9 upon.

10 10. Counsel for the parties shall mutually exchange supplemental expert reports and supporting
11 documents no later than Monday, October 27, 2014, at 5:00 p.m. (Pacific Time), in a manner to be
12 jointly agreed upon.

13 11. All depositions shall be taken no later than Friday, November 21, 2014, with a minimum of
14 72 hours notice.

15 12. Counsel for the parties shall mutually exchange hearing exhibits and demonstrative
16 evidence on Monday, December 1, 2014, at 5:00 p.m. (Pacific Time), in a manner to be jointly agreed
17 upon.

18 13. Unless otherwise stated, documents which are to be filed and/or exchanged by the parties
19 shall be sent via e-mail to the Board and all parties by e-mail by 5:00 p.m. (Pacific Time), on the dates
20 stated. The Board's e-mail address is nmvp@nmvp.ca.gov.

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14. Documents are deemed filed when the documents with attached proofs of service are received by the Board during regular business hours via hand delivery, e-mail, facsimile, regular mail, or overnight mail.

SO ORDERED.

DATED: June 11, 2014

NEW MOTOR VEHICLE BOARD

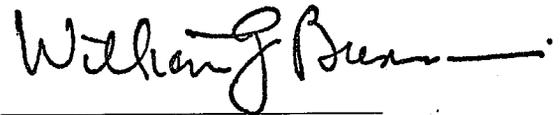
By 
WILLIAM G. BRENNAN
Executive Director

EXHIBIT C

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
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11 In the Matter of the Protest of
12 SAN JOSE YAMAHA POWERSPORTS,
13 Protestant,
14 v.
15 YAMAHA MOTOR CORPORATION, U.S.A.,
16 Respondent.

Protest No. PR-2394-14

**RULINGS ON OBJECTIONS TO
REQUESTS FOR PRODUCTION OF
DOCUMENTS**

17
18 To: John Masi
In Pro Per
19 SAN JOSE YAMAHA POWERSPORTS
776 N. 13th Street
20 San Jose, California 95112

21 Colm A. Moran, Esq.
Attorney for Respondent
22 HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
23 Los Angeles, California 90067

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1 This matter came on regularly for telephonic hearing on Wednesday, August 6, 2014, before
2 Administrative Law Judge Anthony M. Skrocki. John Masi, in Pro Per, represented Protestant. Although
3 Mr. Christopher Hogan, Esq. no longer represents Protestant and did not participate in the hearing, Mr.
4 Masi stated that Mr. Hogan is still available as a "backup" and would be assisting Mr. Masi as needed.
5 Colm A. Moran, Esq. of Hogan Lovells US LLP represented Respondent.

6 **RULINGS ON OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

7 THE PARTIES had resolved their respective objections without the need for a ruling with the
8 exception of the requests indicated below. As to these requests, the following agreements were reached or
9 rulings were made.

10 **RESPONDENT'S REQUESTS – PROTESTANT'S OBJECTIONS**

11 Mr. Masi, in behalf of Protestant, agreed that production would be made as indicated in the letter
12 from Mr. Moran to Mr. Masi, dated July 30, 2014, indicating the agreements reached between Mr. Moran
13 and Mr. Christopher Hogan when Mr. Hogan was representing Protestant. This left only the following
14 requests of Respondent for resolution at the hearing.

15 Request No. 22: Respondent limited its request to business plans regarding the Yamaha
16 operations. Protestant agreed to produce the requested documents.

17 Request No. 24 and Request No. 25: Respondent limited its requests to documents showing how
18 much money is spent on advertising. Protestant agreed to produce the documents that exist.

19 Request No. 26: Respondent limited its request to documents supporting Protestant's claims that
20 it was not furnished adequate Yamaha products. Protestant agreed to produce the requested documents.

21 **PROTESTANT'S REQUESTS – RESPONDENT'S OBJECTIONS**

22 The parties had resolved their concerns. There were no requests or objections at issue.

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1 NOTE: As stated by the Administrative Law Judge and agreed by the parties, the
2 remaining schedule established by the Board's Pre-Hearing Conference Order dated June 11, 2014,
3 continues in effect.

4 SO ORDERED.

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6 DATED: August 6, 2014

NEW MOTOR VEHICLE BOARD



7
8 By _____
9 ANTHONY M. SKROCKI
10 Administrative Law Judge

EXHIBIT D

Clerk stamps date here when form is filed.

FILED
ORANGE COUNTY SUPERIOR COURT
AUG 22 2014
ALAN CARLSON, EXECUTIVE OFFICER/CLERK
BY M. Suchy, DEPUTY

1 Petitioner (Employer)

a. Name: Yamaha Motor Corporation, U.S.A.
Lawyer for Petitioner (if any, for this case):
Name: Colm Moran State Bar No.: 202,685
Firm Name: Hogan Lovells US LLP

b. Your Address (If you have a lawyer, give your lawyer's information.):
Address: 1999 Avenue of the Stars, Suite 1400
City: Los Angeles State: Ca Zip: 90067
Telephone: 310-785-4661 Fax: 310-785-4601
E-Mail Address: colm.moran@hoganlovells.com

Fill in court name and street address:

Superior Court of California, County of Orange
North Justice Center
1275 N. Berkeley Avenue
Fullerton, Ca 92838

Court fills in case number when form is filed.

Case Number:
30-2014-00736686

2 Employee (Protected Person)

Full Name: Rocky Aiello

3 Respondent (Restrained Person)

Full Name: John Masi

Description:

Sex: [x] M [] F Height: 6 Weight: 175 Date of Birth: 1-7-1962
Hair Color: Brown Eye Color: Black Age: 52 Race: Asian / Indian
Home Address (if known): 2749 Mira Bella Circle
City: Morgan Hill State: Ca Zip: 95037
Relationship to Employee:

4 [] Additional Protected Persons

In addition to the employee, the following family or household members or other students are protected by the temporary orders indicated below:

Table with 5 columns: Full Name, Sex, Age, Household Member?, Relation to Employee. Includes checkboxes for Yes/No.

[] Additional protected persons are listed at the end of this Order on Attachment 4.

5 Expiration Date

This Order, except for any award of lawyer's fees, expires at:

Date: 8/22/15 Time: [] a.m. [] p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

6 Hearing

- a. There was a hearing on (date): 8/22/14 at (time): 9⁰⁰ A in Dept.: NID Room: _____
(Name of judicial officer): CONN MORO made the orders at the hearing.
- b. These people were at the hearing:
- (1) The petitioner/employer representative (name): Mr. Ailed
 - (2) The lawyer for the petitioner/employer (name): Mr. Moran
 - (3) The employee
 - (4) The lawyer for the employee (name): _____
 - (5) The respondent
 - (6) The lawyer for the respondent (name): _____
- Additional persons present are listed at the end of this Order on Attachment 5.
- c. The hearing is continued. The parties must return to court on (date): _____ at (time): _____.

To the Respondent:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

7 Personal Conduct Orders

- a. You are ordered **not** do the following things to the employee
- and to the other protected persons listed in (4):
 - (1) Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.
 - (2) Commit acts of violence or make threats of violence against the person.
 - (3) Follow or stalk the person during work hours or while going to or from the place of work.
 - (4) Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
 - (5) Enter the person's workplace.
 - (6) Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.
 - (7) Other (specify):
 Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).

- b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.



8 Stay-Away Order

a. You **must** stay at least 100 yards away from (check all that apply):

- (1) The employee
- (2) Each other protected person listed in **(4)**
- (3) The employee's workplace
- (4) The employee's home
- (5) The employee's school
- (6) The employee's children's school
- (7) The employee's children's place of child care
- (8) The employee's vehicle
- (9) Other (specify):
6555 KATELLOA AVE
CYPRESS CA 90630

b. This stay-away order does not prevent you from going to or from your home or place of employment.

9 No Guns or Other Firearms and Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. If you have not already done so, you must:

- (1) Sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
- (2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns have been turned in, sold, or stored. (You may use Form WV-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.)

c. The court has received information that you own or possess a firearm.

10 Costs

You must pay the following amounts for costs to the petitioner

<u>Item</u>	<u>Amount</u>	<u>Item</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

Additional amounts are attached at the end of this Order on Attachment 10.

11 Other Orders (specify):

Additional orders are attached at the end of this Order on Attachment 11.

This is a Court Order.



Warning and Notice to the Respondent:

You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item ⑨. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in item ⑤ on page 1.

Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of this order and has disobeyed it, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the orders. Consider the restrained person served (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was at the restraining order hearing or was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.



EXHIBIT E

From: Moran, Colm A.
Sent: Tuesday, September 02, 2014 2:46 PM
To: johnmasi@gmail.com
Subject: San Jose Yamaha v. Yamaha Motor Corporation
Attachments: PR-2394-14 pho.pdf

Dear Mr. Masi – under the attached prehearing conference order, the parties were required to produce all discovery documents by no later than August 22, 2014. To date, I have not received any documents from you. Please contact me by the close of business tomorrow with an explanation and status of your document production. Yamaha Motor Corporation, U.S.A. reserves all of its rights and remedies regarding this issue, including the right to seek dismissal of your protest. Thank you.

Colm Moran

Partner

Hogan Lovells US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

Tel: +1 310 785 4600
Direct: +1 310 785 4661
Fax: +1 310 785 4601
Email: colm.moran@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
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8 STATE OF CALIFORNIA
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11 In the Matter of the Protest of

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15 YAMAHA MOTOR CORPORATION, U.S.A.,

16 Respondent.
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Protest No. PR-2394-14

**PRE-HEARING CONFERENCE
ORDER**

18 To: Christopher J. Hogan, Esq.
Attorney for Protestant
19 LAW OFFICE OF CHRISTOPHER J. HOGAN
1952 Mantova Street
20 Danville, California 94506

21 Colm A. Moran, Esq.
Attorney for Respondent
22 HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
23 Los Angeles, California 90067

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24 names, addresses, telephone numbers, and capacity or status of the witnesses.

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3 tentatively scheduled for Monday, December 8, 2014. **Counsel for the parties shall call (877)**
4 **402-9753 and enter access code no. 437282 to join the telephonic conference.** A Pre-Hearing
5 Conference with the assigned Administrative Law Judge may be scheduled to address witnesses, exhibits,
6 pre-hearing briefs, stipulations of fact, and so on.

7 9. Counsel for the parties shall mutually exchange expert reports and supporting documents
8 no later than Monday, October 6, 2014, at 5:00 p.m. (Pacific Time), in a manner to be jointly agreed
9 upon.

10 10. Counsel for the parties shall mutually exchange supplemental expert reports and supporting
11 documents no later than Monday, October 27, 2014, at 5:00 p.m. (Pacific Time), in a manner to be
12 jointly agreed upon.

13 11. All depositions shall be taken no later than Friday, November 21, 2014, with a minimum of
14 72 hours notice.

15 12. Counsel for the parties shall mutually exchange hearing exhibits and demonstrative
16 evidence on Monday, December 1, 2014, at 5:00 p.m. (Pacific Time), in a manner to be jointly agreed
17 upon.

18 13. Unless otherwise stated, documents which are to be filed and/or exchanged by the parties
19 shall be sent via e-mail to the Board and all parties by e-mail by 5:00 p.m. (Pacific Time), on the dates
20 stated. The Board's e-mail address is nmnb@nmnb.ca.gov.

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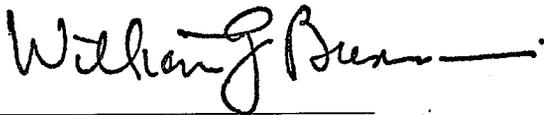
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1 14. Documents are deemed filed when the documents with attached proofs of service are
2 received by the Board during regular business hours via hand delivery, e-mail, facsimile, regular mail, or
3 overnight mail.

4 SO ORDERED.

5
6 DATED: June 11, 2014

NEW MOTOR VEHICLE BOARD

7
8 By 
9 WILLIAM G. BRENNAN
Executive Director

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EXHIBIT F

From: Moran, Colm A.
Sent: Tuesday, September 02, 2014 3:10 PM
To: 'John Masi'
Subject: RE: San Jose Yamaha v. Yamaha Motor Corporation
Attachments: LA_1097525_1.pdf; LA_1096722_1.pdf; PR-2394-14 Rulings on Objections to Requests for Production of Documents....pdf

Mr. Masi – Yamaha served you with discovery requests in June. A copy is attached. You may recall that on July 30 I sent you a letter describing my discussions with Chris Hogan regarding discovery. A copy of that letter is also attached. Finally, we had a conference call with the judge on August 6, which resulted in the attached ruling on objections. You need to produce all documents responsive to my June 30 discovery requests as modified by my July 30 letter and the August 6 Board order. Thank you.

Colm Moran

Partner

Hogan Lovells US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

Tel: +1 310 785 4600
Direct: +1 310 785 4661
Fax: +1 310 785 4601
Email: colm.moran@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

From: John Masi [<mailto:johnmasi@gmail.com>]
Sent: Tuesday, September 02, 2014 3:02 PM
To: Moran, Colm A.
Subject: Re: San Jose Yamaha v. Yamaha Motor Corporation

Please let me know what documents you need or want

John

On Tue, Sep 2, 2014 at 2:45 PM, Moran, Colm A. <colm.moran@hoganlovells.com> wrote:

Dear Mr. Masi – under the attached prehearing conference order, the parties were required to produce all discovery documents by no later than August 22, 2014. To date, I have not received any documents from you. Please contact me by the close of business tomorrow with an explanation and status of your document production. Yamaha Motor Corporation, U.S.A. reserves all of its rights and remedies regarding this issue, including the right to seek dismissal of your protest. Thank you.

Colm Moran

Partner

Hogan Lovells US LLP1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

Tel:	+1 310 785 4600
Direct:	+1 310 785 4661
Fax:	+1 310 785 4601
Email:	colm.moran@hoganlovells.com www.hoganlovells.com

Please consider the environment before printing this e-mail.

About Hogan Lovells

Hogan Lovells is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP. For more information, see www.hoganlovells.com.

CONFIDENTIALITY. This email and any attachments are confidential, except where the email states it can be disclosed; it may also be privileged. If received in error, please do not disclose the contents to anyone, but notify the sender by return email and delete this email (and any attachments) from your system.

--

John Masi

July 30, 2014

VIA ELECTRONIC MAIL

Mr. John Masi
San Jose Yamaha
776 N. 13th Street
San Jose, CA 95112

Re: Cenotaph Resources, LLC d/b/a San Jose Yamaha v. Yamaha Motor Corporation, U.S.A.

Dear Mr. Masi:

I am writing regarding Cenotaph Resources, LLC d/b/a San Jose Yamaha's ("SJY") Objection to Document Demands relating to the document requests served on SJY by Yamaha Motor Corporation, U.S.A. ("YMUS") in this matter.

As you know, I had a meet and confer telephone conference with Chris Hogan prior to his withdrawal as your counsel in this matter. In that telephone conference, Mr. Hogan and I discussed the possible resolution of several of your objections to YMUS's discovery requests. Mr. Hogan told me he planned to provide you with a summary of our discussions.

Below you will find a list of document requests from the discovery served in this matter by YMUS. In each case, SJY has objected to the requests. The proposed resolution to those issues that I discussed with Mr. Hogan is described below. Please let me know if you will agree to withdraw your objection to some or all of the listed requests:

Request Nos. 1-3: Mr. Hogan stated that SJY would produce all documents reasonably responsive to these requests despite the stated objections. Please confirm.

Request No. 6: Mr. Hogan stated that he did not understand what I meant by "allocation" in Request No. 6. I explained to Mr. Hogan that when I refer to "allocation" I am looking for documents related to product orders requested or placed by SJY and/or products offered for sale to SJY by YMUS. Please confirm whether SJY will withdraw its objections to Request No. 6.

Request No. 9: Mr. Hogan stated that he did not understand what I meant by "breach" in Request No. 9. I explained that I mean any disputes or disagreements between SJY and GE and/or Capital One regarding any agreement between those parties. Please confirm whether SJY will withdraw its objections to Request No. 9.

Request No. 13: Mr. Hogan stated that he did not understand what I meant by "fraudulent" in Request No. 13. I explained that I mean any alleged incorrect, inaccurate, or misleading statement made to you in connection with your acquisition of SJY. Please confirm whether SJY will withdraw its objections to Request No. 13.

Request No. 16: I told Mr. Hogan that I would narrow Request No. 16 such that it would be limited to any alleged violation by YMUS of any California Vehicle Code section referenced in the protest filed in this matter by SJY. Please confirm whether SJY will withdraw its objections to Request No. 16.

Request No. 17: Mr. Hogan stated that he did not understand what I meant by "breach" in Request No. 17. I explained that I mean any disputes or disagreements between SJY and YMUS regarding the parties' dealer agreement. Please confirm whether SJY will withdraw its objections to Request No. 17.

Request No. 21: I told Mr. Hogan that YMUS was not seeking personal financial information (e.g., social security numbers) for any of SJY's employees. With that limitation, please confirm whether SJY will withdraw its objections to Request No. 21.

Request No. 22 and Nos. 24-26: Mr. Hogan and I did not make any progress in resolving SJY's objections to Request No. 22 and Nos. 24-26. It is my understanding, therefore, that SJY plans to continue asserting its objections to these requests. Is that correct?

Request No. 32: I agreed to limit Request No. 32 to non-privileged communications that reference the notice of termination. Please confirm whether SJY will withdraw its objections to Request No. 32.

Request No. 41: I told Mr. Hogan that YMUS was not seeking personal financial information (e.g., social security numbers) for any of SJY's employees. With that limitation, please confirm whether SJY will withdraw its objections to Request No. 41.

Request Nos. 43-44: I told Mr. Hogan that I would defer Request Nos. 43-44 until the time for expert discovery in this matter provided that SJY would agree that YMUS has not waived any of its rights as a consequence of such agreement. Please confirm your agreement.

As you know, I need to provide the Board with a list of any document requests still in dispute between YMUS and SJY on Friday, August 1. I ask, therefore, that you give me your position on the above requests prior to the deadline for filing the disputed discovery request list with the Board.

Please contact me with any questions. Thank you.

Very truly yours,



Colm A. Moran

Partner
colm.moran@hoganlovells.com
D (310) 785-4661

1 HOGAN LOVELLS US LLP
Colm A. Moran (Bar No. 202685)
2 1999 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
3 Telephone: (310) 785-4600
Facsimile: (310) 785-4601
4 colm.moran@hoganlovells.com

5 Attorneys for Respondent
YAMAHA MOTOR CORPORATION, U.S.A.

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Protest of
12 SAN JOSE YAMAHA POWERSPORTS,
13 Protestant,
14 v.
15 YAMAHA MOTOR CORPORATION,
U.S.A.,
16 Respondent.
17

Protest No. PR-2394-14

**RESPONDENT YAMAHA MOTOR
CORPORATION, U.S.A.'S REQUEST FOR
PRODUCTION OF DOCUMENTS**

18
19 Respondent Yamaha Motor Corporation, U.S.A. ("YMC"), demands that Protestant San
20 Jose Yamaha Powersports ("San Jose Yamaha") produce and permit inspection and copying of
21 the items described below. This demand is intended to cover all documents and things in San Jose
22 Yamaha's custody and control.

23 **DEFINITIONS**

24 1. "San Jose Yamaha," "you" and "your" shall mean Protestant Cenotaph Resources,
25 LLC d/b/a San Jose Yamaha Powersports, by whatever name known, including Cenotaph
26 Resources, LLC, San Jose Yamaha, or San Jose Yamaha Powersports, and also includes San Jose
27 Yamaha's predecessors, subsidiaries, parents, and affiliates and its past and present officers,
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1 directors, partners, employees, agents, attorneys, and representatives as well as all other persons
2 acting or purporting to act on its behalf for any purpose whatsoever.

3 2. "YMC" shall mean Respondent Yamaha Motor Corporation, U.S.A. and also
4 includes its predecessors, subsidiaries, parents, and affiliates and its past and present officers,
5 directors, partners, employees, agents, attorneys, and representatives as well as all other persons
6 acting or purporting to act on its behalf for any purpose whatsoever.

7 3. "Dealer Agreement" shall mean the Yamaha Motor Corporation, U.S.A. Sales and
8 Service Agreement and the Dealer Agreement Amendment and Addendum entered into between
9 San Jose Yamaha and YMC.

10 4. "Protest" shall mean the protest filed by San Jose Yamaha in this matter.

11 5. "Facilities" shall mean the property located at 776 N. 13th Street, San Jose,
12 California and/or any other facilities used for San Jose Yamaha's Yamaha operations.

13 6. "Notice of Termination" shall mean the March 24, 2014, letter from YMC to San
14 Jose Yamaha stating, inter alia, YMC's intent to terminate the Dealer Agreement.

15 7. "GE" means GE Capital, GE Capital - Commercial Distribution Finance or any of
16 their predecessors, subsidiaries, parents, and affiliates and their past and present officers,
17 directors, partners, employees, agents, attorneys, and representatives as well as all other persons
18 acting or purporting to act on their behalf for any purpose whatsoever.

19 8. "Capital One" means Capital One Financial Corporation and also includes its
20 predecessors, subsidiaries, parents, and affiliates and its past and present officers, directors,
21 partners, employees, agents, attorneys, and representatives as well as all other persons acting or
22 purporting to act on its behalf for any purpose whatsoever.

23 9. The term "communications" shall mean any contact between two (2) or more
24 persons, companies, or other entities. It includes, but is not limited to, written contact by
25 documents and oral contact by telephone conversations or personal, i.e., "face to face" meetings.

26 10. The term "any" includes the words "each" and "all," and vice versa.

27 11. The term "document" shall mean all "writings" and all "recordings" as those terms
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1 are defined in Rule 250 of the California Rules of Evidence. Document shall include, without
2 limitation, all written, handwritten, recorded, punched, taped, filmed or graphic material, typed,
3 or otherwise preserved communication, however produced or reproduced, including any letter,
4 correspondence, note, e-mail, electronic message, book, pamphlet, article, bulletin, directive,
5 review, publication, memorandum (including but not limited to of telephone conversations),
6 diary, log, test, analysis, study, projection, check, invoice, receipt, bill, purchase order, shipping
7 order, contract, lease, agreement, work paper, calendar, envelope, paper, telephone message, tape,
8 computer tape, computer disc, computer card, recording, videotape, film, microfilm, microfiche,
9 facsimile, drawing, account, ledger, statement, financial data, data sheet, data processing material,
10 data compilations and electronically stored information of any kind, and all other writings or
11 communications, including all non-identical copies, drafts, preliminary sketches no matter how
12 produced or maintained in San Jose Yamaha's actual or constructive possession, custody or
13 control or of which San Jose Yamaha has knowledge of the existence, and whether prepared,
14 published, or released by San Jose Yamaha or any other person or entity. The term document is
15 intended to include all drafts of documents and all documents in San Jose Yamaha's actual or
16 constructive possession, custody or control and whether prepared, published or released by San
17 Jose Yamaha or by any other person or entity. Without limitation on the foregoing, the term
18 document shall include any copy that differs in any respect from the original or other versions of
19 the document, such as, but not limited to, copies containing notations, insertions, corrections,
20 marginal notes, recommendations or any other variations. The term document shall include any
21 and all attachments to any of the foregoing, regardless of whether such attachment is indicated on
22 or referred to in the document to which it is attached.

23 12. The terms "and" and "or" are to be construed both conjunctively and disjunctively
24 as necessary to make these requests inclusive rather than exclusive. The singular form of a noun
25 or pronoun includes the plural form and vice versa.

26 13. The term "person" shall mean any natural person, trust, joint venture, corporation,
27 partnership, and any other association, entity or group, whether or not formed for business
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1 purposes, any and all of the heirs, predecessors, successors, beneficiaries and/or assigns thereof,
2 any and all of its or their former and/or current holding companies, subsidiaries and/or affiliates,
3 and all of the former and/or current directors, officers, partners (including joint venture partners),
4 members, trustees, beneficiaries, employees, shareholders, investors, agents, consultants,
5 insurance companies, investigators, representatives, heirs, in-house and/or outside attorneys, in-
6 house and/or outside accountants and independent contractors thereof, and any and all other
7 persons who formerly acted or purported to act and/or currently act or purport to act upon behalf
8 of it or any of them, and any domestic or foreign government body, commission, board, agency,
9 branch, department, and any component, member, or element thereof.

10 14. The term “concerning” shall mean evidencing, constituting, discussing, referring
11 to, relating to, related to, defining, describing, mentioning, detailing, commenting upon,
12 pertaining to, compromising, showing, regarding, reflecting, assessing, evaluating, recording,
13 concerning, or utilized or referred to in connection with.

14 15. The terms “including” and “include” shall mean “including but not limited to.”

15 **GENERAL PROVISIONS AND INSTRUCTIONS**

16 1. In answering these requests, you are required to furnish all documents available to
17 you, including documents in possession of your investigators, agents, representatives, consulting
18 or testifying experts, attorneys, investigators for your attorneys, and any other person or persons
19 acting on your behalf.

20 2. If any of the documents requested below are claimed to be privileged or otherwise
21 withheld, you are required to provide a privilege log, which must describe the nature of the
22 documents, communications, or things not produced or disclosed in a manner that will enable
23 YMC to assess the applicability of the privilege or protection.

24 3. If any of the requested documents cannot be produced in full, produce them to the
25 extent possible, and specify the reason for your inability to produce the remainder, stating
26 whatever information, knowledge or belief you have concerning the unproduced portions.

27 4. In responding to these requests, please produce the documents as they are kept in
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1 the usual course of business or to organize and label them to correspond with the categories of
2 these requests.

3 DOCUMENT REQUESTS

4 1. All documents concerning any current or former agreement(s) (whether written or
5 oral) between San Jose Yamaha and YMC, including, but not limited to, all documents
6 concerning the negotiation, interpretation or meaning of any such agreement(s) and the parties'
7 performance thereunder.

8 2. All documents concerning San Jose Yamaha's application to become a Yamaha
9 dealer.

10 3. All documents concerning any communications between San Jose Yamaha and
11 YMC from January 2013 to date.

12 4. All documents concerning any communications between San Jose Yamaha and
13 GE, including all documents regarding the alleged breach or the termination of any agreement
14 between San Jose Yamaha and GE.

15 5. All documents concerning any communications between San Jose Yamaha and
16 Capital One, including all documents regarding the alleged breach or the termination of any
17 agreement between San Jose Yamaha and Capital One.

18 6. All documents concerning communications between San Jose Yamaha and YMC –
19 or between San Jose Yamaha and any person – about San Jose Yamaha's sales performance,
20 customer satisfaction performance, inventory and allocations, the Facilities, any other facility
21 used for your Yamaha sales or service operations at any time, and/or your Yamaha parts and
22 service operations.

23 7. All documents concerning any customer complaints relating in any way to San
24 Jose Yamaha's operations or relating to YMC.

25 8. All documents concerning any dispute between San Jose Yamaha and any
26 employee of San Jose Yamaha.

27 9. All documents relating to any alleged breach of any agreement between San Jose
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1 Yamaha and GE and/or Capital One, including any forbearance agreements.

2 10. All documents concerning any loans obtained by San Jose Yamaha relating to its
3 Yamaha operations or your acquisition of the Yamaha dealership, including the loan that closed
4 on September 25, 2013.

5 11. All documents concerning any products received from YMC that you claim were
6 not ordered by San Jose Yamaha.

7 12. All documents concerning any alleged interference by YMC with your business
8 relationship with any person or entity, including GE and/or Capital One.

9 13. All documents concerning any alleged fraudulent statement made to you in
10 connection with your acquisition of San Jose Yamaha.

11 14. All documents regarding your acquisition of San Jose Yamaha, including all
12 communications with the prior owner(s) and the asset purchase agreement relating to such
13 purchase.

14 15. A complete copy of your April 7, 2014 letter to the California New Motor Vehicle
15 Board.

16 16. All documents concerning your allegation that YMC has violated the California
17 Vehicle Code regarding its dealings with your dealership.

18 17. All documents concerning your allegation that YMC has breached the terms of the
19 Dealer Agreement.

20 18. All documents concerning any alleged investment made by San Jose Yamaha in its
21 Yamaha operations.

22 19. All documents concerning San Jose Yamaha's past, present, or future (projected)
23 sales performance, whether stated in units, profits, or registration and penetration rates.

24 20. All documents concerning any operating losses you have suffered while operating
25 San Jose Yamaha.

26 21. San Jose Yamaha's audited and unaudited financial statements, including without
27 limitation operating statements or reports.

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1 22. All documents concerning any business, marketing, or operating plan concerning
2 San Jose Yamaha's operations.

3 23. All documents concerning the demographics, buying patterns, geographical
4 concentrations, or other characteristics of Yamaha customers, including, but not limited to, any
5 questionnaires or surveys of San Jose Yamaha's customers.

6 24. All documents concerning San Jose Yamaha's advertising and/or marketing of its
7 Yamaha sales and service operations, including, but not limited to, (i) any direct mail used by San
8 Jose Yamaha as well as print, radio, and television advertisements placed by San Jose Yamaha,
9 and (ii) advertising budgets and actual advertising expenditures.

10 25. Documents sufficient to establish the dollar amount of money spent on advertising
11 or marketing Yamaha products and services by San Jose Yamaha by category (e.g., direct mail,
12 print advertisements, etc.).

13 26. All documents concerning San Jose Yamaha's sales performance, customer
14 satisfaction performance, Yamaha inventory and Yamaha product allocations.

15 27. All documents concerning any evaluations or surveys completed by San Jose
16 Yamaha's customers or completed by any person based on comments by San Jose Yamaha's
17 customers.

18 28. All documents concerning any civil, criminal, administrative, or governmental
19 proceedings involving, or complaints against, San Jose Yamaha or any officer, director or
20 shareholder of San Jose Yamaha, regardless of whether such proceedings or complaints are local,
21 state, or federal in nature.

22 29. All documents concerning any contention by you that San Jose Yamaha has
23 conducted acceptable business compared to the business available to it.

24 30. All documents concerning studies, analyses or evaluations performed by or on
25 behalf of San Jose Yamaha that concern in any way the sale or service of new and/or used
26 Yamaha products.

27 31. All agreements between you and any other person concerning the Facilities or any
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1 other facility used for your Yamaha sales or service operations at any time.

2 32. All documents concerning the Notice of Termination.

3 33. All documents concerning any contention by you that the Notice of Termination
4 was improper, illegal, or otherwise lacks good-cause.

5 34. All documents concerning any contention by you that the Notice of Termination is
6 against the public welfare.

7 35. All documents concerning any contention by you that San Jose Yamaha has made
8 a significant investment and incurred obligations to perform its part under the Dealer Agreement.

9 36. All documents concerning any contention by you that San Jose Yamaha has made
10 a permanent investment in its Yamaha franchise.

11 37. All documents, whether prepared by San Jose Yamaha or by a third party,
12 concerning the past, current, or projected future value of San Jose Yamaha and/or its assets,
13 including, but not limited to, any documents concerning the value of the operations of its
14 individual line-makes.

15 38. All documents concerning any contention by you that the termination of San Jose
16 Yamaha's franchise will adversely affect the retail motorcycle business and consuming public in
17 the relevant market area.

18 39. All documents concerning any contention by you that San Jose Yamaha has
19 satisfied its warranty obligations under the Dealer Agreement.

20 40. All documents concerning any other material allegation in the Protest.

21 41. All documents concerning the identity and responsibilities of the individuals
22 employed by San Jose Yamaha that worked in any capacity on San Jose Yamaha's operations,
23 including, but not limited to, any general managers, sales managers, service managers, finance
24 personnel, salespeople, technicians, or office workers.

25 42. All documents concerning the identity of any witness that you expect to testify on
26 San Jose Yamaha's behalf at the final hearing in this matter.

27 43. All documents forwarded to, and/or reviewed by, any expert(s) retained by San
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1 Jose Yamaha concerning the Protest.

2 44. All documents and/or reports prepared by any expert(s) retained by San Jose
3 Yamaha concerning the Protest.

4 45. All documents that you expect to introduce into evidence at the final hearing in
5 this matter.

6 Date: June 30, 2014

HOGAN LOVELLS US LLP



8 Colm A. Moran
9 Attorneys for Respondent
10 YAMAHA MOTOR CORPORATION, U.S.A.

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, the undersigned, certify and declare that I am over the age of 18 years, employed
4 in the County of Los Angeles, State of California, and not a party to the above-entitled action.
My business address is 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067.

5 On **June 30, 2014**, I served the foregoing document described as **RESPONDENT**
6 **YAMAHA MOTOR CORPORATION, U.S.A.'S REQUEST FOR PRODUCTION OF**
7 **DOCUMENTS** upon the interested parties listed below by first transmitting via electronic mail
and then placing a true copy thereof enclosed in a sealed envelope addressed and sent as follows:

8 Christopher J. Hogan
9 Law Office of Christopher J. Hogan
10 1952 Mantova Street
11 Danville, CA 94506
12 chogan@chrishoganlaw.com

Attorneys for Protestant

13 New Motor Vehicle Board
14 1507 – 21st Street, Suite 330
15 Sacramento, CA 95811
16 916-445-1888
17 E-mail: nmvb@nmvb.ca.gov

18 **BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing
19 correspondence for mailing. Under that practice it would be deposited with U.S. Postal
20 Service on that same day with postage thereon fully prepaid at Los Angeles, California in the
21 ordinary course of business. I am aware that on motion of the party served, service is
22 presumed invalid if the postal cancellation date or postage meter date is more than one day
23 after date of deposit for mailing in affidavit.

24 **BY ELECTRONIC MAIL:** I caused said document to be transmitted by e-mail per
25 agreement of the parties.

26 **BY UPS OVERNIGHT:** I caused such envelope to be delivered to UPS for overnight
27 courier service to the offices of the addressee(s) listed above.

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on **June 30, 2014**, at Los Angeles, California.

29 Colm A. Moran
30 Printed Name



Signature

1 NEW MOTOR VEHICLE BOARD
1507 - 21ST Street, Suite 330
2 Sacramento, California 95811
Telephone: (916) 445-1888
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
10

11 In the Matter of the Protest of
12 SAN JOSE YAMAHA POWERSPORTS,
13 Protestant,
14 v.
15 YAMAHA MOTOR CORPORATION, U.S.A.,
16 Respondent.

Protest No. PR-2394-14

**RULINGS ON OBJECTIONS TO
REQUESTS FOR PRODUCTION OF
DOCUMENTS**

17
18 To: John Masi
In Pro Per
19 SAN JOSE YAMAHA POWERSPORTS
776 N. 13th Street
20 San Jose, California 95112

21 Colm A. Moran, Esq.
Attorney for Respondent
22 HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
23 Los Angeles, California 90067

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1 This matter came on regularly for telephonic hearing on Wednesday, August 6, 2014, before
2 Administrative Law Judge Anthony M. Skrocki. John Masi, in Pro Per, represented Protestant. Although
3 Mr. Christopher Hogan, Esq. no longer represents Protestant and did not participate in the hearing, Mr.
4 Masi stated that Mr. Hogan is still available as a "backup" and would be assisting Mr. Masi as needed.
5 Colm A. Moran, Esq. of Hogan Lovells US LLP represented Respondent.

6 **RULINGS ON OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

7 THE PARTIES had resolved their respective objections without the need for a ruling with the
8 exception of the requests indicated below. As to these requests, the following agreements were reached or
9 rulings were made.

10 **RESPONDENT'S REQUESTS – PROTESTANT'S OBJECTIONS**

11 Mr. Masi, in behalf of Protestant, agreed that production would be made as indicated in the letter
12 from Mr. Moran to Mr. Masi, dated July 30, 2014, indicating the agreements reached between Mr. Moran
13 and Mr. Christopher Hogan when Mr. Hogan was representing Protestant. This left only the following
14 requests of Respondent for resolution at the hearing.

15 Request No. 22: Respondent limited its request to business plans regarding the Yamaha
16 operations. Protestant agreed to produce the requested documents.

17 Request No. 24 and Request No. 25: Respondent limited its requests to documents showing how
18 much money is spent on advertising. Protestant agreed to produce the documents that exist.

19 Request No. 26: Respondent limited its request to documents supporting Protestant's claims that
20 it was not furnished adequate Yamaha products. Protestant agreed to produce the requested documents.

21 **PROTESTANT'S REQUESTS – RESPONDENT'S OBJECTIONS**

22 The parties had resolved their concerns. There were no requests or objections at issue.

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1 NOTE: As stated by the Administrative Law Judge and agreed by the parties, the
2 remaining schedule established by the Board's Pre-Hearing Conference Order dated June 11, 2014,
3 continues in effect.

4 SO ORDERED.

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6 DATED: August 6, 2014

NEW MOTOR VEHICLE BOARD



7
8 By _____
9 ANTHONY M. SKROCKI
10 Administrative Law Judge

EXHIBIT G

[REDACTED]

From: John Masi <johnmasi@gmail.com>
Sent: Thursday, September 04, 2014 4:36 PM
To: Moran, Colm A.
Subject: Documents
Attachments: Request 22.docx; Request 26A.pdf; Request 26B.pdf; Request 26C.pdf; Request 26D.pdf; Request 26E.pdf; September 2 letter for request for docs.docx

Attached are all the documents you requested

--
John Masi

San Jose Yamaha

Operating Plan – John Masi Acquisition

Purchase of Business: This acquisition is an asset based sale, to be operated under an existing LLC called Cenotaph Resources, LLC. The sale amount is \$649,000, including \$300,000 in parts inventory. Total down payment coming from John Masi's personal assets will be \$250,000, leaving a SBA loan for \$395,000.

Working Capital:

Monthly cash required to operate business is \$25K, the business generates approximately \$6K a month operating cash. Additional operating cash will be available from Cenotaph Resources, LLC in the amount of \$175,000, which will be used as a line of credit until one is established.

General Operations:

I plan to operate the business without major changes for the first year. I will function as general manager and sales person. Mike Perfetto, the present owner and general manager, will continue to work as a sales person and floater, teaching me the business for the first year. All other employees will be retained at the same compensation rates except for Kathy Gross, the other owner, who will retire after a two-week transition period.

San Jose Yamaha has been a successful business for over 40 years. Mike and Kathy modified the business to break even at a much lower sales level during the Great Recession. Now that the economy is recovering well as evidenced by the recent recovery in the housing market, people have more discretionary cash to spend and the pent-up demand for motorcycles, ATVs and personal watercraft should result in a significant increase in San Jose Yamaha's business in 2013.

I feel that it is important to maintain continuity of operation vs. the former owners' business model to retain key employees, keep customers happy and ensure the continued success of San Jose Yamaha.

Sales and Profitability:

Improvement in sales will result from an aggressive advertising campaign to include email, internet and television advertising, providing attractive incentives to existing and new customers. I plan to implement weekly and monthly sales goals and benchmark against key objectives. Key objectives will be formulated based on competition, historical sales and management of motorcycle inventory. In addition, seasonal sales objectives will include ATV's and watercraft as appropriate for their seasonal sales cycle.

We will improve on service related revenue by benchmarking performance objectives to establish and maintain customer satisfaction, accuracy of service, revenue per man-hour and turn-around time to ensure the service department is profitable and maintaining the highest level of customer service.

After a year I should know much more about the business and the industry. I will formulate a growth plan for years 2 and 3 based on the new insight I will gain in working with Mike Perfetto for the first year.

Short term leasing objectives:

I intend to make a new lease agreement with the landlord and keep the business in its present location for the time being. The lease will probably have a short initial term and a series of options so I can move to a larger location in the near future if business warrants it. There is an Auto Zone store planned for the property directly across the street, and that may bring significantly more traffic to San Jose Yamaha as well.

Long term Improvements:

I am keeping an open mind about the desirability of adding additional brands and/or moving to a larger, more visible location over the next several years.

I would like to buy a building close to the 680 Milpitas area with highway traffic visibility to better cater to the tri valley of Dublin, Livermore and Pleasanton areas in addition to the existing San Jose traffic.

Balance Sheet, Cenotaph Resources, LLC post SJ Yamaha Acquisition

Cenotaph Resources, LLC
Proforma Balance Sheet Post Yamaha Acquisition

Assets

Current Assets

Cash	\$	175,000
Accounts Receivable		
Inventory	\$	300,000

Long Term Assets

FFA less Depreciation	\$	15,000
Good Will	\$	334,000

<i>Total Assets</i>	\$	824,000
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Liabilities

Current Liabilities

Long Term Liabilities

SBA Loan	\$	485,000
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Equity

Owners Equity	\$	339,000
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<i>Total Liabilities and Owners Equity</i>	\$	824,000
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John Masi <johnmasi@gmail.com>

My unanswered emails

John Masi <johnmasi@gmail.com> Tue, Mar 18, 2014 at 12:04 PM
To: Rocky Aiello <rocky_aiello@yamaha-motor.com>, Dylan Creedon
<Dylan_Creedon@yamaha-motor.com>, Jon Grant <jon_grant@yamaha-
motor.com>
Bcc: Brian_Gabel@yamaha-motor.com

I have sent 3 emails to you and am appalled that I have not received a message. I understand you folks have been busy at Daytona but for the rest of us unfortunately are not on vacation.

I need the following addressed ASAP:

1. Special flooring and price on the 7 YZ 4500 2008
2. Special pricing on the 2012 FJR 1300 with 399 miles on it
3. A 2011 Wave runner which Michael has put 59 hours on need an answer ASAP

I was never told by Yamaha or GE that this was part of the deal. Need update ASAP

--

John Masi



John Masi <johnmasi@gmail.com>

Release of Units

Dylan Creedon <Dylan_Creedon@yamaha-motor.com> Thu, Feb 13, 2014 at 10:24 AM
To: "John Masi (johnmasi@gmail.com)" <johnmasi@gmail.com>

Dear Mr. Masi,

Until further notice I have been instructed to contact you in writing or through email. I am also aware that our Yamaha Legal Department has asked that you contact all Yamaha employees in writing as well.

I understand that you are looking for a Bolt-R Spec and R6 to be delivered to your dealership.

As of right now your dealership is on Credit Hold due to unit(s) being sold SOT (Sold Out of Trust).

I know that Jon Grant in our credit department has advised you of this several times. I understand that you still have not signed and returned the Forbearance Agreement that GE sent to you approximately one month ago which may help you get units released to the dealership.

If you need anything else from me please feel free to send me an email dylan_creedon@yamaha-motor.com

Thanks,

Dylan Creedon

DM 812 West Region

[707-570-8754](tel:707-570-8754) Fax

dylan_creedom@yamaha-motor.com

CONFIDENTIAL:

The information contained in this email communication is confidential information intended only for the use of the addressee. Unauthorized use, disclosure or copying of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email and destroy all copies of this communication, including all attachments.



John Masi <johnmasi@gmail.com>

Yamaha ATV raptor 125 Yamaha Blue

John Masi <johnmasi@gmail.com>

Mon, Feb 24, 2014 at 1:42 PM

To: Dylan Creedon <Dylan_Creedon@yamaha-motor.com>

Bcc: Brian_Gabel@yamaha-motor.com, lary.yasui@ge.com

Need a Team Yamaha Blue ASAP. When are my FZ09 coming?? and why was I sent 3 Camo gray Bolts need the Matt grey ASAP

--

John Masi



John Masi <johnmasi@gmail.com>

Allocations

John Masi <johnmasi@gmail.com>

Mon, Mar 3, 2014 at 4:33 PM

To: Jon Grant <jon_grant@yamaha-motor.com>, rocky_aiello@yamaha-motor.com, Dylan Creedon <Dylan_Creedon@yamaha-motor.com>

Bcc: Brian_Gabel@yamaha-motor.com

Kindly let me know what are the flavor's and quantities of motorcycles allocated to me and are currently on hold. Need answer ASAP

--

John Masi



John Masi <johnmasi@gmail.com>

SR 400 and MT 07

John Masi <johnmasi@gmail.com>

Thu, Jul 10, 2014 at 1:12 PM

To: Dylan Creedon <Dylan_Creedon@yamaha-motor.com>

Need the above bikes ASAP and as advised before I will prepay. How is that GP sports gets allocated and you have visited them multiple times and I have not received any visit form Yamaha to date. Need answer ASAP

--

John Masi

September 2, 2014

Hogan Lovells
1999 Avenue of the Starts
Suite 1400
Los Angeles, CA 90067

Re: Cenotaph Resources, LLC dba San Jose Yamaha v. Yamaha Motor Corporation USA

- Requests for Production of Documents

Mr. Moran:

Please find the enclosed documents as agreed.

Request No. 22: Respondent limited its request to business plans regarding the Yamaha operations. Protestant agreed to produce the requested documents.

See attachment named Request 22.

Request No. 24 and Request No. 25: Respondent limited its requests to documents showing how much money is spent on advertising. Protestant agreed to produce the documents that exist.

Year to date, San Jose Yamaha has spent approximately \$25,000 on advertising and promotions. Including updating the showroom facilities, an open house event, constant contact email promotion costs and printed material. Additionally, SJY has a proposal from Comcast for advertising which was supposed to run from April, unfortunately because of deteriorating business relationships and lack of inventory we were unable to start the advertising contract. Please see attachment named "Comcast Advertising".

Request No. 26: Respondent limited its request to documents supporting Protestant's claims that it was not furnished adequate Yamaha products. Protestant agreed to produce the requested documents.

See attached emails named "Request 26A", "Request 26B", "Request 26C", "Request 26D", "Request 26E"

Please do not hesitate to contact me if you have any questions.

John Masi

EXHIBIT H

From: Moran, Colm A.
Sent: Monday, September 08, 2014 5:04 PM
To: 'John Masi'
Subject: RE: Documents

Mr. Masi – your email included a total of six documents. It is simply not possible that those are the only documents you possess that are responsive to the discovery requests served in this matter. You are obligated to perform a thorough and good-faith search, including of hard-copy documents, emails and other electronic documents. Additionally, you were required to file and serve a preliminary witness list on September 5. I have not received anything from you.

If have not received a complete production of documents and a witness list from you by no later than September 15, I will make a motion to the Board for all appropriate orders, including an order dismissing your protest for failure to comply with the Board’s scheduling order in this matter.

Thank you for your anticipated cooperation.

Colm Moran

Partner

Hogan Lovells US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

Tel: +1 310 785 4600
Direct: +1 310 785 4661
Fax: +1 310 785 4601
Email: colm.moran@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

From: John Masi [<mailto:johnmasi@gmail.com>]
Sent: Thursday, September 04, 2014 4:36 PM
To: Moran, Colm A.
Subject: Documents

Attached are all the documents you requested

--
John Masi

EXHIBIT I



YAMAHA MOTOR CORPORATION, U. S. A.

8555 KATELLA AVENUE • CYPRESS • CALIFORNIA • 90630-5101 • 714/761-7332 FAX 714/761-7836

September 15, 2014

Personal & Confidential

VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED

#7011 2970 0004 3058 6586

Mr. John Masi
Cenotaph Resources, LLC d/b/a San Jose Yamaha
776 N. 13th Street
San Jose, CA 95112

RE: **Notice of Termination of Yamaha Dealer Agreement**

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

Dear Mr. Masi:

This notice is being sent to you pursuant to Section 6 of the Yamaha Motor Corporation, U.S.A. Sales and Service Agreement (the "Dealer Agreement") between Yamaha Motor Corporation, U.S.A. ("Yamaha") and Cenotaph Resources, LLC d/b/a San Jose Yamaha ("San Jose Yamaha" or the "Dealership"), and applicable law. Effective sixty (60) days from your receipt of this letter, the Dealer Agreement will terminate in accordance with this notice, without further action or notice of any kind. Nothing in this notice alters or amends the Notice of Termination (the "First Notice of Termination") issued to the Dealership by Yamaha on March 24, 2014. The First Notice of Termination remains in full force and effect.

Our action is based on the Dealership's failure to maintain floorplan financing as required by Section 5.5 of the Dealer Agreement, which requires the Dealership to "maintain for its operations hereunder adequate working capital and lines of wholesale credit to enable Dealer to fulfill its responsibilities under this Agreement." As you know, GE Commercial Distribution Finance ("GE") suspended the Dealership's floorplan on December 31, 2013, as the result of the Dealership's failure to remit payment to GE under the terms of its loan documents. Since that time, the Dealership has not had floorplan financing in place. Further, on April 29, 2014, your Dealership signed a Voluntary Surrender agreement in which you acknowledged that the Dealership was in default of its agreements with GE and agreed to surrender some or all of the Dealership's inventory to GE. The Dealership's failure to maintain floorplan financing together

with its surrender of inventory to GE, has left San Jose Yamaha without adequate inventory to meet its obligations under the Dealer Agreement.

Yamaha has given the Dealership multiple opportunities to cure this breach and obtain a replacement floorplan. For example, we wrote to the Dealership about this issue on February 27, 2014, May 21, 2014, June 18, 2014, July 15, 2014, and July 29, 2014. The Dealership, however, has not obtained replacement financing. Indeed, the only substantive response we have received from you on this issue was in your email dated July 24, 2014, in which you stated that “getting another \$1.2 million in flooring is setting myself up as a glutton for punishment.”

In view of the foregoing, the Dealership is subject to termination under, without limitation, Section 6.2(e) of the Dealer Agreement, which provides for the termination of the agreement based on the Dealership’s failure to “maintain adequate lines of credit for purposes of purchasing the Products or the parts and accessories from Yamaha.”

Sincerely,



Dylan Creedon
District Manager
Yamaha Motor Corporation, USA

cc: William G. Brennan, Executive Director
California New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(via Certified Mail, Return Receipt Requested)
#7011 2970 0004 3058 6593

EXHIBIT J



Search USPS.com or Track Packages

Quick Tools

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

USPS Tracking™



Customer Service >
Have questions? We're here to help.

Tracking Number: 70112970000430586586

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

Available Actions

Return Receipt After Mailing

DATE & TIME	STATUS OF ITEM	LOCATION
September 17, 2014 , 12:57 pm	Delivered	SAN JOSE, CA 95112
Your item was delivered at 12:57 pm on September 17, 2014 in SAN JOSE, CA 95112.		
September 17, 2014 , 7:26 am	Out for Delivery	SAN JOSE, CA 95113
September 17, 2014 , 7:16 am	Sorting Complete	SAN JOSE, CA 95113
September 17, 2014 , 7:01 am	Arrived at Unit	SAN JOSE, CA 95113
September 16, 2014 , 11:23 pm	Arrived at USPS Facility	SAN JOSE, CA 95125
September 16, 2014 , 10:21 pm	Departed USPS Facility	SAN JOSE, CA 95101
September 16, 2014 , 6:35 pm	Arrived at USPS Facility	SAN JOSE, CA 95101
September 16, 2014 , 6:03 am	Departed USPS Facility	SANTA ANA, CA 92799
September 15, 2014 , 7:57 pm	Arrived at USPS Facility	SANTA ANA, CA 92799

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, the undersigned, certify and declare that I am over the age of 18 years, employed in the
4 County of Los Angeles, State of California, and not a party to the above-entitled action. My
5 business address is 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067.

6 On **October 30, 2014**, I served the foregoing document described as
7 **DECLARATION OF COLM A. MORAN IN SUPPORT OF MOTION TO DISMISS**
8 **PROTEST** upon the interested parties listed below by first transmitting via electronic mail and
9 then placing a true copy thereof enclosed in a sealed envelope addressed and sent as follows:

10 Mr. John Masi
11 San Jose Yamaha
12 776 N. 13th Street
13 San Jose, CA 95112
14 Email: johnmasi@gmail.com

15 New Motor Vehicle Board
16 1507 – 21st Street, Suite 330
17 Sacramento, CA 95811
18 916-445-1888
19 E-mail: nmvb@nmvb.ca.gov

20 **BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing
21 correspondence for mailing. Under that practice it would be deposited with U.S. Postal
22 Service on that same day with postage thereon fully prepaid at Los Angeles, California in the
23 ordinary course of business. I am aware that on motion of the party served, service is
24 presumed invalid if the postal cancellation date or postage meter date is more than one day
25 after date of deposit for mailing in affidavit.

26 **BY ELECTRONIC MAIL:** I caused said document to be transmitted by e-mail per
27 agreement of the parties.

28 **BY UPS OVERNIGHT:** I caused such envelope to be delivered to UPS for overnight
courier service to the offices of the addressee(s) listed above.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on **October 30, 2014**, at Los Angeles, California.

26 Colm A. Moran
27 Printed Name


Signature

DECLARATION OF COLM A. MORAN